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**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
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| Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 | ) | MM Docket No. 93-215 |
| | ) | |
| Rate Regulation | ) | |

# COMMENTS

CABLE TV OF GEORGIA LIMITED PARTNERSHIP
FALCON CABLE TV
INSIGHT COMMUNICATIONS
MID-AMERICA CATV ASSOCIATION
MOUNT VERNON CABLEVISION INC.
NASHOBA COMMUNICATIONS
PENNSYLVANIA CABLE TELEVISION ASSOCIATION
PRESTIGE CABLE TV
WESTSTAR COMMUNICATIONS
WHITCOM INVESTMENT COMPANY

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**TABLE OF CONTENTS**

## SUMMARY

The purpose of a cost of service showing "backstop" is to permit cable operators to be able to demonstrate that they should be permitted to charge rates which exceed the Commission's benchmarks in order to earn a compensatory return on their investment. It is therefore fundamentally incorrect for the Commission to suggest that its regulatory framework for cost-based rates should be designed to mirror its benchmark rates. The benchmark rates were designed to approximate the rates which would prevail if the market were competitive. However, there is no correlation between marketplace rates and cost-based rates. The goal of cost of service regulation has never been to emulate a competitive market. Rather, the goals have been to allow the service provider to earn a reasonable return on prudent investments sufficient to attract capital and to assure the ability to finance plant improvements, while assuring reasonable (not necessarily competitive) rates to consumers. Moreover, the cost of service regulations must provide a reasonable return on investment and incentives to modernize plant if the Commission is to meet the policy goals of the 1992 Cable Act.

The watchword which should guide the Commission in this rulemaking is flexibility. There is great diversity in the cable television industry, not just between companies large and small, but also between systems. There are distinctions of system size, system capacity, density, climate, terrain, age of plant, age and maturity of the system, form of ownership and so on. These

distinctions create such a wide variety of cost differentials hat attempts to use industry averages or other one-size-fits-all solutions are doomed to failure. Furthermore, the Commission's own education process is in such an early stage that efforts to generalize would be little more than guesswork. Therefore, the Commission should allow for the greatest possible latitude in cost of service showings.

Commenters herein urge the Commission not to design a cost-based rate methodology which borrows heavily from the telephone model. Cable television is not a utility. It is not an essential service; it is not a monopoly; and almost 40% of homes passed by cable plant choose not to subscribe. Moreover, the regulation of cable rates is only supposed to be a transitory surrogate for competition. The 1992 Cable Act envisions competition eventually supplanting the need for rate regulation. Therefore, a utility-like rate regulatory structure should not be erected for this interim purpose.

In describing a rate base upon which a revenue requirement is to be calculated, the Commission must be cognizant of the fact that every dollar which has been invested in cable systems has been invested legitimately. The concept of "excess acquisition costs" is simply invalid in the present context. Cable systems were acquired and capital improvements made in an unregulated environment. Commission proposals to exclude certain assets, such as intangibles, from the rate base are unfair, confiscatory and ultimately self-defeating. Cable operators have financed and paid for intangible and other assets fully expecting to recover their investment and earn a profit on that investment. These costs have been recorded in accordance with Generally Accepted Accounting Principles and meet the definition of an asset as a future economic benefit over which a cable operator can exercise control. At a minimum, the Commission must adopt transition rules which permit cable operators to recover their arms-length investments.

The Commission has put forward a number of possible alternatives to a cost of service showing, as well as the concept of a streamlined cost of service showing. Many of these ideas are meritorious and deserve further consideration, particularly as they relate to reducing the burden on smaller cable systems. One additional recommended alternative is the "marginal cash flow" test suggested by Commenter Falcon Cable TV in MM Docket No. 92-266.

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**COMMENTS**

Cable TV of Georgia Limited Partnership, Falcon Cable TV, Insight Communications, Mid-America CATV Association, Mount Vernon Cablevision Inc., Nashoba Communications, Pennsylvania Cable Television Association, Prestige Cable TV, WestStar Communications and Whitcom Investment Company ("Commenters"), through their attorneys, hereby respectfully submit these comments to the Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.

**INTRODUCTION**

Commenters consist of a group of cable system operators and two trade associations representing cable operators. Commenters' interest in this proceeding is to help shape a useful cost of service alternative to the Commission's benchmark methodology. This alternative should be readily available and relatively easy to use for those cable systems whose costs exceed the norm. It should not mimic the telephone company model because cable television is neither a necessity or a monopoly. Cable television is not only unique but also there is great diversity within the industry. Therefore, a flexible approach to cost of service must be the Commission's guiding principle. The theme of flexibility informs these comments.

## I. THE GOAL OF COST OF SERVICE CANNOT BE TO MIRROR BENCHMARK RATES

The Commission has specifically requested comments on what rate levels its cost-based requirements should produce in relation to its benchmark rates.[1] The Commission suggests that it may be appropriate to design its regulatory framework for cost-based rates to mirror its benchmark rates by producing cost-based rates that approximate competitive rate levels.[2] Commenters submit that this formulation of the Commission's cost of service goals completely misses the mark.

To start with, there is no correlation between market driven competitive rates and cost of service. While the Commission's benchmark approach has attempted to quantify a competitive differential and devise a series of matrices that impose that differential on cable systems based on their size and channel capacity, any such modeling approach is inherently inaccurate and imprecise because it does not take into account the fact that competition manifests itself in unique ways in different circumstances. For example, the existence of competition in a

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[1] Notice, ¶ 7.

[2] Notice, ¶ 10.

market does not necessarily translate into lower rates for service. Competition may be based on superior product, technical quality or service that is provided. If competition were based solely on price, specialty retail stores could not exist since they cannot compete on the basis of price with large discount stores such as K-mart or Value Village. Similarly, cable systems would not be able to compete on the basis of price with free over-the-air television.

Even where price competition does exist, the Commission has performed no analysis which would in any way suggest that the average ten percent competitive differential which it uncovered in its survey allowed the surveyed systems to earn a reasonable rate of return on their investment. Nor does the Commission know whether an MSO-owned system might have been subsidized to meet the competitive threat. In other words, price competition can, in the short run, result in at cost or even below cost pricing if the goal is to increase market share and weaken a competitor.

For the foregoing reasons, the Commission's benchmark model can never accurately emulate a competitive market in all situations. Furthermore, because traditional cost of service regulation was developed to regulate rates of natural monopolies such as utility companies, the goals of cost of service have never been to emulate a competitive market. Rather, these goals have been to allow the service provider to earn a reasonable return on prudent investments sufficient to attract capital which will foster plant improvements while assuring reasonable (not necessarily competitive) rates to customers. Indeed, while the competitive cable systems studied by the Commission had, on average, lower rates, there has been no analysis whatsoever as to whether these systems were also able to support the investment in newly emerging technologies and services. Furthermore, the rates charged by these systems most certainly did not reflect the additional regulatory costs imposed on cable systems by the 1992 Cable Act and implementing regulations.

Benchmark rates are also a particularly inappropriate target for cost of service regulation because benchmark rates represent average rates for systems of a certain size and capacity. The goal of cost of service must allow for cable operators whose operations deviate from the average to earn a reasonable rate of return on their investment. The Commission's benchmark did not take into account numerous factors that could justify higher rates, such as density, demographics, terrain, regional labor cost differences, and different climatic conditions that could result in abnormal maintenance costs, just to name a few.[3] Given the inherent limitations of the Commission's survey, the goal of the Commission's cost of service regulations must be to allow cable operators to earn a reasonable rate of return on their investment consistent with the need to protect subscribers from unreasonable rates.

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[3]Indeed, the Commission did not look into any cost data when it derived the benchmarks. For that matter, neither did GAO in its rate study or Congress when it passed the 1992 Cable Act.

The Commission noted the policy goals Congress set forth in the 1992 Cable Act, yet its competitive rate emulation goal falls short of achieving these goals. Congress not only wanted cable operators to be able to recover their cost of doing business, but also to have the incentive to expand facilities and services and to participate in the building of a modern telecommunications infrastructure.[4] Mirroring what are thought to be competitive rates, with no real regard for actual costs and incentives, will not help to realize these goals. If cost of service is to be used as a "backstop" to allow operators to justify above-benchmark rates based on cost, then, by definition, cost of service rates cannot and should not mirror benchmark rates.

## II. REGULATORY REQUIREMENTS

### A. Procedural Requirements for Cost of Service Showings.

The Commission proposes that once a cost of service showing has been evaluated by either the franchising authority or the Commission, another such showing for the particular tier may not be made for one year.[5] Commenters concur with this proposal with three caveats. First, the one year interval should be triggered by a rate increase request, not the initial rate justification. Many cable operators have had no rate increase since at least 1992. It would not be fair to make them wait for one year after the initial showing that their existing rates are justified. Second, the year should not run from the date the local

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[4]Cable Act of 1992, Section 2(b).

[5]Notice, ¶ 17.

franchising authority or the Commission has finished evaluating the previous cost of service showing, but rather it should run from the date that the cable operator submitted its last cost of service showing. To do otherwise would extend the one-year period in a manner not of the cable operator's making. The lag time already built into the approval process should not be exacerbated. Third, the Commission should have a mechanism for permitting certain mid-year rate adjustments where cost increases are caused by the completion of a rebuild, the addition of additional channels of service and other similar expenditures. Many such capital expenditures are mandated in one fashion or another so that the timing of the expenditures is not within the cable operator's control. For example, the Commission's own new technical standards may require a rebuild; a franchise renewal could mandate significant changes; a road widening project could result in substantial plant relocation; new undergrounding could be imposed; etc. Such mid-year rate adjustments should apply not only to the service rates, but also to equipment lease rates if new equipment is required as part of the changes to the system. Such "known and measurable" events ought to trigger permissive mid-year updating of cost of service studies. It would be unfair in these circumstances to make a cable operator wait until the next anniversary of its last cost of service showing plus the time it takes for the franchising authority or the Commission to render its decision.

The Commission seeks comment on whether to limit or bar cost of service showings seeking to justify rates higher than existing rates.[6] There should be no bar to a cost of service showing justifying an initial rate higher than the existing rate. The presumption that cable operators have set their rates at compensatory levels is not necessarily true given the FCC's rate freeze and the requirement under the benchmark procedure that in certain circumstances the rates from September 1992 be utilized. Additionally, it should be pointed out that the Commission has stated that cost of service showings might result in the lowering of an existing rate. To not allow the converse would be asymmetrical and unfair. The numbers which a cost of service showing produces are what they are, and if they justify higher rates, cable systems ought to be free to set their rates at those levels.

Finally, the Commission proposes to require that cost of service showings be made on an Commission prescribed form and associated worksheets. While the concept behind this proposal seems benign enough the Commission must be cautious not to preclude flexibility in cost of service showings. Different facts will undoubtedly apply as between a cost of service showing in one franchise area and such a showing in another area. A cable operator should have enough flexibility in the format of its presentation to reflect these differences so long as the cable operator complies with the FCC's cost accounting

[6] Notice, ¶ 18.

requirements in making its computations. Moreover, there may be different kinds of showings appropriate in different circumstances. For example, if the FCC sets up its form to provide for an allocation of costs and/or rate base based on the number of channels, the operator would have no flexibility to argue that the allocation be weighted by the corresponding number of subscribers watching each channel or the cost to deliver various programming. Equally as important, the Commission simply does not have sufficient information at this time to precisely describe one format for everyone to use. Not only will showings differ between operators, but also an operator's second showing may well differ from its first attempt. These first attempts should not automatically become de facto standards. Flexibility must be the watchword, particularly during the first days of this process. Therefore, any FCC form and accompanying worksheets should do no more than require a uniform method for presenting the cost computations pursuant to the Commission's cost accounting rules, but should not preclude an operator from a flexible presentation of the important cost variables in any given situation.

B. Cost of Service Standards.

The Commission proposes to use the traditional formulation of cost of service as its standard to govern cost-based rates for cable service.[7] Thus, the permitted rates would have to be adequate to pay a cable system's expenses and earn a reasonable

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[7]Notice, ¶ 20.

return on its investment. The Commission then summarizes tentative conclusions described in more detail later in the Notice, namely, that certain expenses would be excluded, depreciation rates will be prescribed, an original cost methodology will be used and a rate of return will be set for the provision of regulated cable service. Although the traditional formulation is per se unimpeachable, the filling in of the details is crucial in determining whether a cost of service formulation will work for cable television. Thus, for example, depreciation rates designed to accurately track the useful physical life of cable plant could well not allow for flexibility in the adoption and use of new technology. Likewise, the use of an original cost methodology may or may not be acceptable on a going forward basis but is confiscatory as its applies to prior investments made in an unregulated environment. Finally, setting a single rate of return for the industry is not appropriate even if it took into consideration the proper risk factors peculiar to cable television. Comments on the specific Commission proposals in these areas are set forth below.

Commenters fear that the Commission is leaning too strongly on a telephone-like model for its cost of service structure. This would be a mistake. In the first place, cable television is not a necessity or a monopoly in contrast to a local telephone company. Although very few homes choose not to have telephones, some 38.5% of homes passed choose not to subscribe to cable television.[8] Moreover, there is much more price sensitivity in the provision of cable service than is the case for telephone service. The second major distinction is that cable systems are extremely heterogeneous, whereas telephone companies are quite homogeneous. In fact, the cable industry is extraordinarily diverse. Not only do companies vary in size from TCI to the single small system operator, but individual cable systems also differ greatly in their maturity, their competitive situations, their costs, their legal form of organization and more. This diversity argues strongly against the adoption of industry-wide standards and averaged values, concepts borrowed from the regulation of the telephone industry. Cable's uniqueness requires flexibility, not rigidity.

The Commission solicits comments on the establishment of transition elements for cable operators as they adapt to a rate regulated environment.[9] Commenters agree that there should be transition elements. As a matter of general principle, practices that were used legitimately in the prior unregulated environment should be permitted to remain in place and any change mandated by the Commission's cost of service rules should only become effective on a prospective basis. The regulation of cable television represents a shift from a free market structure to a regulated structure. Some costs and practices which have been

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[8] Cable Television Developments, June 1993, National Cable Television Association.

[9] Notice, ¶ 22.

permissible may not be permitted under the new structure. Insofar as this is true, these costs should be recoverable as transition costs as part of cost of service rates. The present situation is analogous to the experience in the natural gas industry where consideration is frequently given to transition costs. Thus, for example, the Federal Energy Regulatory Commission allowed the cost of long-term purchase agreements, abrogated by new regulations, to be substantially recovered via a passthrough methodology.[10] Likewise, the California Public Utilities Commission has permitted the cost of above-market long-term gas purchase commitments to be recovered as a transition cost.[11] The logic in these situations was that the companies had entered into such agreements prudently and in good faith under the prior market structure, and should not be penalized by being unable to recover the "excess" purchase cost.[12] The identical logic applies in the cable television context.

1. Annual Expenses.

The Commenters agree with the Commission's position that a cost of service showing should permit a cable operator to recover its operating expenses, depreciation and taxes as the annual

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[10]Order No. 436, 50 Fed. Reg. 42408, affirmed in part, Associated Gas Distributors v. FERC, 824 F.2d 981 (D.C. Cir. 1987), cert. denied, 485 U.S. 1006 (1988).

[11]See, Decision No. 86-12-009, 22 CPUC 2d 443 (1986); Decision No. 86-12-100, 22 CPUC 2d 491 (1986); Decision No. 87-12-039, 26 CPUC 2d 213 (1987).

[12]See, also, In the Matter of Communications Satellite Corporation, Docket No. 16070, 56 FCC 2d 1101 (1975).

expenses of providing cable service. Commenters also agree that recovery through regulated cable rates of expenses unrelated to the provision of regulated cable service should be prohibited.[13]

a. Operating expenses.

The Commission tentatively concludes that a number of enumerated costs are includable as operating expenses,[14] a conclusion with which Commenters concur. The Commission then asks whether and how certain other expenses should be recoverable. Most particularly, the Commission raises the question of whether programming expense should be a recoverable operating expense or a cost element for inclusion in the rate base.[15] Commenters believe that programming cost should be an operating expense and that a markup should be permitted. Cable operators must have an economic incentive to provide new and different programming. Commenters concur that a markup is a proper and workable method of providing such an incentive.

With regard to the question of which costs should be expended and which capitalized, Commenters believe that the answer is already provided by the use of Generally Accepted Accounting Principles ("GAAP"). Cable operators adhere to GAAP in their bookkeeping and this guides expense versus capitalization decisions. No further guidance is needed.

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[13]Notice, ¶ 23.

[14]Notice, ¶ 24. Commenters presume that management fees are included in this list. It is certainly a valid and proper expense within the industry.

[15]Notice, n.24.

The Commission proposes to exclude certain special expenses such as lobbying, charitable contributions, membership fees and other similar expenses from allowable annual operating expenses.[16] Commenters disagree with the Commission's tentative conclusion in this regard. Many of these expenses are just as much a part of running a business as other direct costs of providing service. Certain of these expenses, such as charitable contributions, club dues and other monies expended in the community should be allowed because cable, unlike traditional utilities, must struggle to maintain and increase penetration in most communities and has certain programming content obligations. Thus, cable's public service role and need to maintain good community relations play a much more important part in the conduct of its business than is the case for the average gas or electric company. These expenses are therefore components of providing service which are integral to a cable system's operation. Legitimate and prudent expenses for these purposes should not be disallowed as part of a cable system's annual operating expenses.

b. Depreciation.

Commenters vigorously disagree with the Commission's tentative conclusion that it should prescribe depreciation rates for the purpose of developing cost-based rates for regulated cable service.[17] Prescribing one standard of depreciation, even

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[16] Notice, n.25.

[17] Notice, ¶ 27.

if by plant category, to apply to the entire industry makes very little sense. There are vast differences within categories even in the same cable company. For example, climate plays a large difference in the useful life of cable plant. Likewise, competition in a given market may require the upgrading of plant on a faster schedule than would be the case in another franchise area. Or plant may have to be upgraded sooner than planned because of a franchise renewal requirement, or even new federal technical requirements. In addition, technology change also may dictate different treatment between systems. Incidence of theft and loss also differ. In short, cable operators should be allowed to determine depreciation based on technological and other factors specific to each cable system.

Depreciation rate prescription would needlessly add to the administrative burdens of regulation. Moreover, it would take years for the Commission to gather enough data to prescribe depreciation rates by class of cable plant. At most, the Commission might look into placing a "cap" on depreciation to prevent "excessive" depreciation. This could be done by setting a maximum composite depreciation rate for broad classes of plant. In any event, depreciation rates for cable television should reflect factors specific to that industry.

Commenters favor the Commission's own alternative to the prescription of depreciation rates, i.e., the Commission should for the time being only monitor the depreciation practices engaged in by cable systems.[18] So long as cable systems use GAAP, which they all do, their depreciation practices should be left to individual discretion.[19]

Commenters do agree that the FCC should prescribe recovery on a straight line remaining life basis.[20] Most companies, and certainly most regulated utilities, use the straight line basis for depreciation. Moreover, prior years' depreciation must not be recalculated. Commenters will address the question of the basis upon which depreciation should be taken in the section on rate base below.

c. Taxes.

The Commission properly proposes to allow taxes incurred in the provision of regulated cable services to be included in annual operating expenses, but it also proposes to include only those taxes payable by the business entity.[21] Thus, income taxes payable on income from cable operations by individuals, partnerships or Subchapter S corporations would not be recoverable under a cost of service regime. Commenters submit that the Commission is in error as a matter of policy and law.

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[18]Notice, ¶ 29.

[19]All companies' compliance with GAAP are reviewed by their auditors. Public companies undergo even more scrutiny.

[20]Commenters disagree with the suggestion in ¶ 28 of the Notice that the maximum useful life of plant is the proper standard. It should be the average useful life. Use of maximum useful life leaves no room for the vagaries of useful life, technological change, regulatory requirements and the other variables described elsewhere in this pleading.

[21]Notice, ¶ 30 and n.32.

This proposal unfairly penalizes cable companies that have chosen to be organized in the foregoing fashion. A typical corporation includes tax liability in its revenue requirement because such corporations are taxed by the federal and state governments. However, the shareholders of a Subchapter S corporation or the partners in a partnership are liable for taxes on their income from cable operations at a rate comparable to those incurred by corporations.[22] Many such firms are small entities with only a single or just a few shareholders who elect this legal status to avoid double taxation of the same person or persons. In addition, the use of these kinds of legal organizations is often necessary to attract equity. The Commission's proposal, were it to be adopted, would penalize smaller cable operators and partnerships by reducing their allowable revenue solely because they have elected to form a business organization which has benefitted them in a legitimate fashion in their provision of cable service. Moreover, partnership agreements and loan covenants often require cash flow distributions to partners or shareholders to cover their taxes on the business income. The effect on the system's revenue requirement is the same as if the entity itself incurred the tax liability.

It is clear that the income tax liability incurred by shareholders of a Subchapter S corporation and by the partners in a partnership is a legally recognized cost of providing service.

[22]Indeed, the recently enacted Omnibus Budget Reconciliation Act of 1993 raised marginal tax rates for individuals above those imposed on corporations.

Thus, the courts have upheld taxes as includable expenses for Subchapter S corporations or partnerships in rate regulated industries.[23] As the Commission well knows, all tax liability associated with the provision of a public utility service is includable among cost of service expenses.[24] To exclude the tax liability attributable to the income of Subchapter S corporations and partnerships would exclude a legitimate cost of doing business. To ignore such expenses because they are not literally applicable to the business entity which is conducting the cable operation would elevate form over substance. Therefore, the Commission should permit a pro forma tax liability, at the equivalent corporate rate, to be included as an operating expense for partnership and Subchapter S cable operators.

2. Rate Base.

The Commission begins its rate base discussion by citing with approval the standards utilized in other regulated industries to define investments properly includable in the rate base, i.e., the "used and useful" and "prudent investment" standards. Commenters urge the Commission not to fall into the easy trap of using these familiar utility regulatory standards. Cable television is not a utility. It is not an essential service; it is not a monopoly; and it is not subscribed to by a

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[23] Suburban Utility Corp. v. Public Utility Commission of Texas, 652 S.W.2d 358 (1983); Moyston v. New Mexico Public Service Commission, 412 P.2d 840 (1966).

[24] Galveston Electric Company v. City of Galveston, 258 U.S. 388 (1922).

significant percentage of the populace.[25] The Commission must rid itself of its utility mindset in this proceeding. Capital investments in the cable industry are made for three reasons: to earn an economic return, to meet competition, or to comply with a regulatory requirement. In the context of the cable television industry, these are all valid investments which should be presumptively includable in rate base. Moreover, the 1992 Cable Act states a clear preference for competition. Regulation of rates is only a transitory surrogate for competition. A utility-like regulatory superstructure should not be erected for this interim purpose.

a. Plant in Service

The Commission states that plant in service is likely to be the greater part of the rate base. The Commission tentatively concludes that valuation of plant in service should be based on an original cost methodology.[26] Commenters vigorously disagree with this tentative conclusion. The Commission notes that different approaches could be used to determine the value of plant included in the rate base: market value, original cost, replacement cost, reproduction cost, or a combination of these approaches. Of all of these choices, original cost is the most inappropriate for the cable industry. Many cable systems have

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[25]According to the 1992 Statistical Abstract of the United States (pp. 551 and 722), in 1990 more homes had VCRs and microwave ovens than cable television, not to mention more telephones, radios and television sets.

[26]Notice, ¶35.

been sold at least once. Most acquiring cable operators do not have access to the seller's records and would be unable to determine the original costs. Moreover, this would be a meaningless concept for the present owner since its basis for plant is an allocated portion of the purchase price. Moreover, if the plant is old it may be substantially depreciated and thus the plant in service rate base would be very small. Neither of the other two costs approaches mentioned by the Commission, replacement and reproduction, would be much better. As discussed below in the context of intangibles, Commenters favor an approach which presumptively includes in the rate base all of the capital invested in the cable system. This would most accurately capture the true rate base of a cable system at a time when the industry is making a transition from a totally unregulated to a regulated environment. Cost methodologies, particularly methodologies which disallow some or all intangible costs, simply cannot truly reflect the rate base that the regulator finds in place on the day that regulation begins.

The most damaging aspect of the Commission's rate base discussion is its tentative conclusion that "excess acquisition costs" should be excluded from the rate base.[27] This would exclude virtually all intangible assets from the rate base. The Commission recognizes that these intangibles reflect the amount that a purchase price exceeds the allocated value of the plant. The Commission also recognizes that the acquisition costs for

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[27]Notice, ¶ 40.

such systems were not necessarily "excessive" or imprudent. Such payments may also be consistent, notes the Commission, with the estimation of market value of similar business transactions during the same time period. Thus, the Commission concedes that cable operators doing business in an unregulated environment likely paid prices in excess of physical plant valuation based on factors which were entirely proper at the time.[28] These items include goodwill, customer lists, franchise rights and other similar intangible assets. However, the Commission still harbors the concept that "monopoly rents" are often a part of acquisition costs. Even if this were true, the baby is thrown out with the bath water when the Commission proposes to disallow all intangibles. In any event, Commenters dispute the Commission's monopoly rent conclusion. In many businesses the going concern value of the business considerably exceeds the book value of its plant. Many such businesses are not monopolies in any sense of the word. Valuation of these businesses for transactional purposes is often based on cash flow. Broadcast station sales provide an instructive example. Cash flow multiples result in purchase prices for broadcast stations far in excess of any possible plant valuation. The larger the city, the bigger the multiple, particularly for television stations. Yet, competition, which is certainly a factor in the broadcast industry, is keener in bigger cities since there are more

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[28]Notice, n.40.